

an axle connected to said frame for movement relative thereto; and  
a system for locking said axle relative to said frame when said frame is tilted by  
more than a predetermined angle.

Rewrite claim 22 in independent form as follows:

22 (Amended) A vehicle comprising:  
a frame;  
an axle connected to said frame for movement relative thereto;  
a system for locking said axle relative to said frame when said frame is tilted by  
more than a predetermined angle;  
a sensor for sensing when said frame is tilted by more than said predetermined  
angle; and  
a boom mounted on said frame.

#### REMARKS

Claim 20 has been amended, without prejudice, to recite "a support for supporting a load, said support being pivoted to elevate the load relative to said frame." Claim 22 has been rewritten in independent form, with no substantive changes. Claims 1-33 remain in the application. Our check in the amount of \$80.00 for the presentation of the additional independent claim (claim 22) is attached hereto. A petition for an extension of time is being filed concurrently herewith. Please charge any deficiency in the fees to our Deposit Account No. 04/1073.

Claims 26-33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action objects to the word "shiftable" in independent claims 26 and 32. Reconsideration is respectfully requested. Applicant respectfully submits that the invention of claims 26 and 32 is defined with particularity and distinctness. In the context of the specification, the claims are not inaccurate. Please note that Applicant's

specification uses the terms “shiftable,” “shifting” and the like throughout (e.g., column 1, lines 38+ (“shifting movement of the axle assembly with respect to the main frame”), column 2, lines 26+, column 3, lines 16+ (“axle means . . . being shiftable relative to the frame”), column 4, lines 49+ (“the front axle assembly 52 is shiftable or pivotable about the axis of the first horizontal pin 59”), column 6, lines 63+ (“the rear axle assembly 62 . . . shifts only very slowly with respect to the main frame 12”)). The claims should be considered and analyzed in the context of the particular application disclosure, not in a vacuum. M.P.E.P. § 2173.02, page 2100-146. In the present case, both the specification and the claims use the term “shiftable” in an accurate, consistent and clear manner. The claims are believed to be in full compliance with § 112.

Moreover, according to The American Heritage Dictionary, Second College Edition (copy enclosed), the word “shift” means “[t]o move or transfer from one place or position to another.” Other dictionaries likewise indicate that the word “shift” can be used in connection with ‘changes in place or position. Things can “shift” from one position to another without “translating.” A person sitting in a chair may “shift” his or her position without getting out of the chair, for example. Contrary to the Office Action, the term “shiftable” does not necessarily connote “translation,” especially not in the context of the present application. This is an additional reason why the rejection of claims 26-33 should be withdrawn, and there are other reasons why the § 112 rejection should be withdrawn.

The application is objected to under 35 U.S.C. § 132 as introducing new matter into the disclosure. Reconsideration is respectfully requested. Adequate support for the sensor of claim 21, the inclination switch of claim 25 and the angular ranges of claims 27 and 28 appears, for example, in column 14, lines 3+, of the specification. The specification describes a “switch SW7 [Fig. 10] . . . of a well-known type which closes when the vehicle tilts at a predetermined angle, such as 3°-4°, for example.” Thus, Applicant respectfully submits that the application contains no “new matter” and is in proper form. See M.P.E.P. §§ 1411.02 and 2163.06.

Claims 20 and 21 are rejected under 35 U.S.C. § 102 as being anticipated by Laverda. Reconsideration is respectfully requested. Claim 20 has been amended to recite a “support for supporting a load,” and also to recite that the support is “pivoted to elevate the load relative to said frame.” The pivoted support is an important feature of the claimed invention. Laverda refers to a threshing-harvesting machine. The prior art machine does not have the pivoted support of amended claim 20. Therefore, the rejection of claim 20 should be withdrawn. Dependent claim 21 should be allowable along with claim 20 and for other reasons.

Claims 22-25 are rejected under 35 U.S.C. § 103 as being unpatentable over Fought in view of Laverda. Reconsideration is respectfully requested. Fought discloses a mobile excavator (Fig. 3) with hydraulic shock absorbers 58, 60 (column 4, lines 58-65). During manipulation of the boom-mounted bucket 46 (Fig. 2), when no movement of vehicle 10 is intended, the shock absorbers 58, 60 are locked to lock the front axle 22 (Fig. 4) to the frame 50 (column 4, line 65 - column 5, line 3). The locking means operates as a substitute for conventional, stand-still outriggers (abstract, last four lines; column 3, lines 12-18).

As noted above, Laverda relates to a threshing-harvesting machine. The Laverda combine has a hydraulic system (Fig. 2) for automatically leveling the machine body 1 (Fig. 1). The Laverda system operates regardless of whether the combine is moving or stopped. The leveling system taught by Laverda would be active even when the combine is stopped. Laverda does not contemplate any use for the combine in the stopped condition other than storing or unloading accumulated grain.

Applicant respectfully submits that it would not have made sense to attempt to incorporate the teachings of Laverda into the Fought excavator. If the two systems were somehow combined, the Laverda leveling system and the Fought shock absorbers would be at contrary cross-purposes. In the stopped, excavating condition, the Fought shock

absorbers 58, 60 would try to lock the frame 50 to the front axle 22, while the Laverda leveling system would attempt to move the frame 50 to a level orientation, regardless of the position of the axle 22, and regardless of whether a level frame orientation were desired by the excavator operator. In the mobile condition, the Fought system would be operating to absorb shocks between the axle 22 and the frame 50, while the Laverda system would try to hydraulically level the frame 50 regardless of whether such leveling was consistent with or contrary to the concept of absorbing shocks imparted by the terrain to the axle 22.

Moreover, the prior art references, even when considered in combination, fail to suggest any motivation for employing the Laverda leveling system in the Fought excavator. Laverda suggests the desirability of maintaining the main body of a combine in a level condition. Neither reference suggests any reason why the Laverda automatic leveling system should be considered applicable or advantageous to an excavator of the type shown by Fought. Combines of the type disclosed by Laverda are operated on the move. Excavators of the type taught by Fought are operated in a stand-still position (conventionally with outriggers installed). Without the benefit of Applicant's own disclosure, there is no reason why a system for automatically controlling the orientation of the main body of a combine should be considered applicable to an excavator.


Applicant respectfully submits that Fought and Laverda, even when considered in combination, do not fairly suggest a vehicle with the combination of (1) a boom mounted on a frame and (2) a system for locking an axle relative to the frame when the frame is tilted by more than a predetermined angle. For all of these and other reasons, Applicant respectfully submits that the rejection of claims 22-25 should be withdrawn.

The indication of allowable subject matter in claims 1-19 and 26-33 is gratefully acknowledged. Allowance of the application with all of the pending claims (claims 1-33), as amended, is solicited.

In connection with the foregoing, please note that Applicant reserves the right to pursue the original claims and other claims in this reissue application and in other applications. The canceled and/or amended claims have been canceled and/or amended solely for the purpose of furthering the prosecution of the present application. Applicant reserves the right to claim the subject matter of the canceled claims, the claims pending prior to this Amendment, and/or the subject matter of other claims embodied in this application, or any continuation, division, continued prosecution application, subsequent reissue, reexamination or other application. Any amendments made to the application are not made for the purpose of distinguishing the claims over prior art except as specifically discussed in the Remarks section of this paper. Applicant may file a continuing application or a request for continued examination with claims that do not contain the limitations discussed in this paper, and Applicant expressly reserves the right to do so.

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Respectfully submitted,

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